

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
JOHNNIE RAY BURKHOLDER,  
Defendant.

2:12-cr-00240-PMP-CWH

**ORDER**

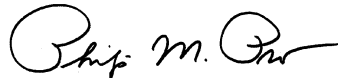
Before the Court for consideration is Defendant Johnnie Burkholder's Motion to Toll One Year Statute of Limitations on Filing Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. #41) filed September 29, 2014, and Defendant Burkholder's Motion Pursuant 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. #42), also filed September 29, 2014. Plaintiff United States filed a timely Response to Defendant Burkholder's Motions (Doc. #47) on December 16, 2014. Defendant Burkholder has failed to file timely Replies with regard to either of his Motions.

Having read and considered the foregoing, and for the reasons set forth in the Government's Response (Doc. #47), including the Declaration of Defendant Burkholder's trial counsel, Nisha Brooks-Whittington, Assistant Federal Public Defender, the Court finds that Defendant's Motion to Toll the One Year Statute of Limitations (Doc. #41) must be denied because Defendant Burkholder has failed to

1 show that he exercised diligence, and that extraordinary circumstances prevented him  
2 from filing his § 2255 Motion in a timely manner. In addition, the Court finds that  
3 even if Defendant Burkholder were able to make the requisite showing required to  
4 toll the one year limitations period, his Motion to Vacate (Doc. #42) must be denied  
5 because it is barred by the waivers contained in his Plea Agreement, and the record  
6 before the Court show conclusively that the assistance rendered by his trial attorney  
7 in these proceedings was in no respect ineffective.

8 **IT IS THEREFORE ORDERED** that Defendant Johnnie Burkholder's  
9 Motion to Toll One Year Statute of Limitations (Doc. #41) is **DENIED** and  
10 Defendant's Motion Pursuant 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct  
11 Sentence by a Person in Federal Custody (Doc. #42) is hereby **DENIED**.

12 DATED: December 29, 2014.

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15 PHILIP M. PRO  
16 United States District Judge  
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